

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 459 of 2007
Date of Decision: 13.2.2007

Ramotar ...Appellant

Versus

Om Parkash and others Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Gobind Dhanda, Advocate, for the appellant.

HEMANT GUPTA, J.

Defendant No.1 is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for specific performance of an agreement dated 14.3.1996 alleged to be executed by the appellant for himself as well as on behalf of defendant Nos. 2 and 3, was decreed to the extent of share of defendant No.1 i.e. the present appellant alone.

Vide the aforesaid agreement, defendant No.1 received Rs.80,000/- as earnest money to execute sale in respect of the land measuring 35 kanals 2 marlas for a total sale consideration of Rs.1,30,000/-. The sale deed was to be executed on 30.5.1996. The present suit for specific performance was filed by the plaintiff-respondent on 20.7.1996. The defendant-appellant admitted existence of agreement but disputed the receipt of earnest money and alleged that the said agreement was got executed under the influence of liquor.

Both the Courts have returned concurrent finding

of fact on the basis of appreciation of evidence that the agreement dated 30.5.1996 Exhibit PW1/A is a voluntary act and has been executed after receipt of the earnest money of Rs.80,000/-. It has further been found that the plaintiff was ready and willing to perform his part of the contract and, therefore, granted decree of specific performance in respect of the share of defendant No.1 in the land in dispute.

Learned counsel for the appellant has vehemently argued that the land in dispute is a Joint Hindu Family Property and, therefore, the appellant was not competent to execute agreement of sale in favour of the plaintiff in respect of such ancestral property. The learned trial Court while returning a finding under issue No. 3 has found that the land in question is not ancestral. It has been found that the defendant has not produced any revenue record to show that the suit land was inherited by Mohar Singh from his grand father.

Learned counsel for the appellant has sought to dispute such finding and argued that in terms of a Division Bench Judgment of this Court in **Anil Kumar v. Ranbir Singh 1988(2) Punjab Law Reporter 510**, the suit for specific performance of such an agreement in respect of Joint Hindu Family Property, cannot be granted.

However, I am unable to agree with the argument raised by the learned counsel for the appellant. There is no evidence of the fact that the suit property in the hands of the appellant was ancestral property. In view of the said factual position, the finding recorded by the learned trial Court that the defendant-appellant has failed to prove that the property was ancestral, cannot be said to be suffering from any patent illegality or irregularity.

The judgment in **Anil Kumar's case (supra)**, cannot be said to applicable to the facts of the present case in view of the aforesaid finding. Such finding could not be disputed in any manner.

No other point has been urged.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which may give rise to any substantial question of law in the present proceedings.

Hence, the present appeal is dismissed.

13-02-2007
ds

(HEMANT GUPTA)
JUDGE